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BORDEN CHEMICAL, INC.



June 9, 1999

Sherry Estes, Esq.
Offices of Regional Counsel
US Environmental Protection Agency
Region V
77 West Jackson Boulevard (C-29A)
Chicago, IL 60604

Re: Skinner Landfill

Dear Ms. Estes:

As you may be aware, Borden Chemical, Inc. entered into a de minimis settlement agreement earlier this year with the Plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio. In addition to providing for settlement of Plaintiffs' claims regarding their past costs at the Skinner site, that agreement requires certain of the Plaintiffs to seek to negotiate a de minimis settlement between Borden Chemical, Inc. and the United States (on behalf of the U.S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model De Minimis Consent Decree set forth in the December 7, 1995 Federal Register.

It is Borden Chemical, Inc.'s understanding the EPA, Region V has now determined what information it will require in order to determine that Borden Chemical, Inc. qualifies for a de minimis settlement at this Site. That information consists of: (i) the summary of each de minimis settler's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each de minimis settler, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Accordingly, I am enclosing the information requested by EPA for Borden Chemical, Inc. I believe that this information amply demonstrates that Borden Chemical, Inc. is entitled to a de minimis settlement consistent with EPA's model de minimis settlement decree. Borden Chemical, Inc. understands that EPA and Plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by Borden Chemical, Inc. in settlement of the claims of Plaintiffs and the United States. By making this settlement offer, Borden Chemical, Inc. does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Borden Chemical, Inc. is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, Borden Chemical, Inc. strongly urges EPA to finalize an appropriate de minimis settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's de minimis settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Very truly yours,

Sharon L. Post

Sharon L. Post

Enclosures

cc: L. Dieker
V. Stamp

Borden Chemical, Inc.

Settlement Amount: \$2,000.00

Excerpt from Allocator's Preliminary Report :

Borden Chemical purchased certain assets from Cities Service Company on January 31, 1974, including the Frederick H. Levy Company facility at 630 Glendale-Milford Rd., Cincinnati. Borden Chemical submitted a separate response from Borden, Inc.

Borden Chemical states that in connection with its response to the EPA's 104(e), it conducted "a thorough investigation of any and all connection between Borden Chemical, Inc.'s facilities and the Skinner Landfill." This investigation included the period both before and after the purchase of the Levy facility. The investigation concluded that after the date that Borden Chemical bought the Levy facility, the Skinner Site was not used for waste disposal.

The company knew of no other facilities within 75 miles of the Site. It had no hazardous waste reports for the years 1980 or 1981 for the Cincinnati facility.

Borden Chemical advised OXY, USA, Inc. is the successor to Cities Service Company which became responsible for Levey's liabilities through a 1970 merger with an entity of which Levey was a part (See the OXY USA, Inc. discussion below). Borden Chemical submitted a copy of the Agreement for Purchase and Sale between Cities Service Company and Borden, Inc. dated January 31, 1974. Paragraph 7 of that Agreement stated that, "... Cities will sell, convey, assign, transfer and deliver to Borden, all the assets and properties of every kind, character and description, whether tangible or intangible, and whether real or personal, wherever located, of the Levey Division. . . ." It goes on to exclude certain assets such as cash, accounts receivable, inventories of finished products, patents, etc. Paragraph 11, entitled "Assumption," stated that:

. . . Borden hereby assumes all the obligations of Cities, arising out of events occurring after the Closing Date relating to the business or assets of the Levey Division transferred hereunder, except to the extent that any such obligation arises from a breach by Cities of a warranty or covenant. Cities will continue to be responsible for all obligations arising out of events occurring prior to and on the Closing Date relating to the business or assets of the Levey Division. Cities makes no representation as to the condition of the assets transferred being in compliance with any federal, state or local laws provided, however, that Cities represents and warrants that Cities has received no notice of any violation or claim of violation of any such law and the management of Cities including the Levey Division management has no actual knowledge thereof. Cities shall have no obligations or liabilities arising out of failure of such assets to have been in compliance prior to Closing, with any federal, state or local law except to the extent that any such obligation arises from a breach by Cities of the foregoing warranty.

The Levey waste disposal facts are discussed in great length in the discussion of OXY below. I do not repeat them here. OXY has not denied responsibility for the Levey share. It argues that Borden Chemical assumed the share by contract or by law. Borden Chemical, for its part, argues that the agreement clearly shows that OXY, as successor to Cities Services, has pre-closing liabilities relating to Levey. It asks me to ratify its determination that it has no responsibility for the Levey share.

As set forth in the OXY discussion, I have decided not to address this issue at this time. I have assigned the Levey share to OXY because OXY concedes it is responsible for the Levey share. Whether OXY can transfer any of its liability to Borden Chemical is a matter for later discussion or determination in this process or a separate proceeding.

As to post-purchase issues, Roger Ludwig testified that he collected about 60 drums of a thick liquid waste from Borden Chemical at a location off of I-70. Borden Chemical has never had a location except at 630 Glendale-Milford Road in Cincinnati. Since no one has disputed this representation, Mr. Ludwig could not have been referring to a Borden Chemical facility in his deposition. Indeed, Mr. Ludwig did not even know if there was a Borden Chemical; he simply associated the facility he visited with the name Borden. R. Ludwig Depo., p. 227. On this record, I am unable to assign this waste to Borden Chemical.

Elsa Skinner, however, identified Borden Chemical as a customer. She testified

Q. How about Borden Chemical Company?

A. They were there, but I don't recall what they brought in or anything else.

Q. How do you know that they were in there?

A. I saw the truck. I don't know what they hauled, though. I can't remember the size of it either....

Q. How about the number of times that they came in? Any recollection of that?

A. There were in there three or four times one year, I know.

Elsa Skinner could not identify the year, the type of waste, or any other details about these disposal events. E. Skinner Depo., p. 241-42. The difficulty in interpreting this testimony is derived from her answer to the question asking her about Borden, Inc.:

Q. How about Borden, Inc., Borden Inc. as opposed to Borden Chemical?

A. Same thing.

E. Skinner Depo., p. 242.

Waste-in Amount. I cannot simply ignore this testimony. It is enough to, at least, create an issue of fact on the usage of the Site. It may not mean more than that in the litigation of this matter. For purposes of this process, however, I have decided to allocate 10 cys to Borden Chemical and 10 cys to Borden, Inc. to address this testimony. I am treating both waste-in amounts as reflecting solid waste disposal.

DINSMORE & SHOHL**FACSIMILE TRANSMITTAL****from STEVE N. SIEGEL, ESQ.****AUGUST 27, 1999****513-977-8261****To: Craig Melodia**

FR 13: 1

Fax #: 312-886-7160**Firm: US EPA--Region V****Client #: 01337-006****Pages: 3; may come through as 4**
(including cover)**Comments: Craig--**

Following are two copies of the final allocation recommendation for our client, Borden Chemical, Inc. One of the copies is an exact copy of the original page as it was prepared for the submittal for the *de minimis* settlements. I have enlarged the print on the second copy so that it should be much easier for you to read. Please call me if I can help in any other way.



If there are any problems in receiving this transmission, please call (513) 977-8483 immediately.

Thank you

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Originals to follow by: None will follow

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372106	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of Chem-fyne	Rest of Chem-Dyne	Total
DOMINION CHEMICAL INC	10	0	372906	0.0027%	262252	0.0000%	0.00%	0.00%			0.00027%

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, Apr

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BORDEN CHEMICAL INC	10	0	372906	0.0027%	262252	0.0000%	0.00%	1

il 12, 1999

Liquid Waste	Owner/Operator & Part of Chem-Dyne	Rest of Chem-Dyne	Total
0.00%			0.00027%